

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #08	CCRB Case #: 202101971	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 02/25/2021 6:51 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 8/25/2022	Precinct: 72		
Date/Time CV Reported Sat, 03/27/2021 1:55 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 03/27/2021 1:55 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Robert Wilson	09818	965620	072 PCT
2. LT Joseph Marsella	00000	945953	072 PCT
3. POM Atalant Fecanji	10927	966566	072 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Nicholas Sanchez	26709	965503	072 PCT
2. POM Xavier Proano	20743	968074	072 PCT
3. POF Monique Samuel	10558	963739	072 PCT
4. POF Rosa Carucci	23152	963907	072 PCT
5. POM Umar Cheema	18390	961688	072 PCT

Officer(s)	Allegation	Investigator Recommendation
A . LT Joseph Marsella	Abuse: Lieutenant Joseph Marsella entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B . LT Joseph Marsella	Force: Lieutenant Joseph Marsella used physical force against § 87(2)(b)	§ 87(2)(b)
C . POM Atalant Fecanji	Force: Police Officer Atalant Fecanji used physical force against § 87(2)(b)	§ 87(2)(b)
D . POM Robert Wilson	Abuse: Police Officer Robert Wilson interfered with § 87(2)(b) use of a recording device.	§ 87(2)(b)
E . POM Robert Wilson	Discourtesy: Police Officer Robert Wilson acted discourteously toward § 87(2)(b)	§ 87(2)(b)
F . LT Joseph Marsella	Abuse: Lieutenant Joseph Marsella forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

## Case Summary

§ 87(2)(b) filed this complaint via the CCRB's online website on March 27, 2021.

On the afternoon of February 25, 2021, § 87(2)(b) a psychologist, called the 72<sup>nd</sup> Precinct telephone switchboard operator and reported that her patient, § 87(2)(b) was actively suicidal. At approximately 6:51 PM, Lt. Joseph Marsella, PO Atalant Fecanji, PO Robert Wilson, and PO Nicholas Sanchez of the 72<sup>nd</sup> Precinct responded to § 87(2)(b) home, located at § 87(2)(b) in Brooklyn. Lt. Marsella and his officers entered § 87(2)(b) apartment (Allegation A: Abuse of Authority, § 87(2)(g) Lt. Marsella and PO Fecanji then allegedly tackled § 87(2)(b) onto her bed (Allegations B and C: Force, § 87(2)(g) § 87(2)(b) cell phone, on her bed, was engaged in a video call with § 87(2)(b) § 87(2)(b) therapist. PO Wilson ended the video call and powered off § 87(2)(b) cell phone (Allegation D: Abuse of Authority, § 87(2)(g) Allegation E: Discourtesy, § 87(2)(g) § 87(2)(b) was then removed involuntarily to § 87(2)(b) (Allegation F: Abuse of Authority, § 87(2)(g) She was not arrested and did not receive any summonses.

The investigation obtained BWC video recorded by all officers on scene.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Lieutenant Joseph Marsella entered § 87(2)(b) in Brooklyn.**

§ 87(2)(b) acknowledged having expressed to a mental health professional that she had suicidal ideations. However, § 87(2)(b) was not aware that anyone had reported any concern about her safety or mental health to the NYPD, or that anyone had requested a wellness check. While § 87(2)(b) was on a video call with § 87(2)(b) her apartment doorbell rang. § 87(2)(b) opened the apartment door several inches and saw police officers at her door. An officer asked, "Are you § 87(2)(b) § 87(2)(b) became frightened and tried to close the apartment door. However, an officer or officers in the hallway overpowered § 87(2)(b) and pushed the door open. § 87(2)(b) turned and ran into her bedroom. The officers entered the apartment and chased her through the hallway and into her bedroom.

§ 87(2)(b) and § 87(2)(b) both stated that § 87(2)(b) had articulated specific plans and intent to commit suicide, and so they, in concert with § 87(2)(b) (a third mental health professional working with § 87(2)(b) decided that § 87(2)(b) needed to be transported to a hospital for her own safety. § 87(2)(b) stated that she called 911 and reported that § 87(2)(b) was an imminent threat to herself and needed to be transported to a hospital. Shortly afterward, PO Wilson called § 87(2)(b) relayed her concerns to PO Wilson and again stated that § 87(2)(b) was an imminent suicide risk. § 87(2)(b) also informed PO Wilson that § 87(2)(b) did not agree that she required evaluation at a hospital.

PO Wilson stated that he first received a call from the 72<sup>nd</sup> Precinct telephone switchboard operator, who notified him that a mental health professional had called the stationhouse to request a wellness check for an actively suicidal patient. PO Wilson then called § 87(2)(b) who confirmed that she believed § 87(2)(b) to be actively suicidal. PO Wilson then called and relayed the same information to Lt. Marsella, after which Lt. Marsella and PO Fecanji met PO Wilson and PO Sanchez at § 87(2)(b) address.

According to Lt. Marsella, because a licensed mental health professional had reported that § 87(2)(b)

§ 87(2)(b) posed an active risk of harm to herself, the officers planned to visit § 87(2)(b) home, speak with her, and gain her voluntary compliance to bring her to a hospital. However, because she had made a threat to harm herself, even if she did not wish to visit a hospital, she would not be able to refuse medical attention. § 87(2)(b) would be required to visit a hospital, whether voluntarily or involuntarily, due to the nature of § 87(2)(b) stated concerns.

Lt. Marsella stated that he positioned himself nearest to § 87(2)(b) apartment door. PO Fecanji, PO Sanchez, and PO Wilson were also present at the door. Lt. Marsella knocked on the door and § 87(2)(b) opened it. Lt. Marsella greeted her by name. She replied, “I’m fine. I’m fine,” and immediately attempted to close the door. Lt. Marsella placed his foot between the door and the door frame so that § 87(2)(b) could not close it. When she tried to close the door, he pushed the door open. § 87(2)(b) then fled into the apartment and into a bedroom. Lt. Marsella and his three officers entered the apartment and followed her into the bedroom. Lt. Marsella and his officers entered the apartment in order to prevent § 87(2)(b) from harming herself.

Lt. Marsella recorded a BWC video capturing the entry (Board Review 01). The relevant portion of video begins at the 1 minute 30 second mark and ends at the 2 minute 6 second mark. The video confirms that § 87(2)(b) saw officers at her apartment door and attempted to close the door, at which point Lt. Marsella pushed the door open and entered the apartment, followed by his three officers.

Per the ruling in *People v. Doll*, 21 N.Y.3d 665 (2013), which articulates the “emergency doctrine,” officers may make warrantless entry where 1) the police have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property, 2) the search is not primarily motivated by intent to arrest and seize evidence, and 3) there exists some reasonable basis to associate the emergency with the area or place to be entered and/or searched (Board Review 02).

In the circumstance at hand, Lt. Marsella and his officers had information from a credible third-party source – a medical professional – that § 87(2)(b) posed an active and imminent risk of self-harm. The officers did not intend to arrest § 87(2)(b) and did not make any arrest. Further, as § 87(2)(b) answered her door, there was no question as to whether her apartment was the correct location § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Force: Lieutenant Joseph Marsella used physical force against § 87(2)(b)**

**Allegation (C) Force: Police Officer Atalant Fecanji used physical force against § 87(2)(b)**

§ 87(2)(b) stated that when she entered her bedroom, an officer or officers pushed her from behind so that she landed face-down on her bed. She also stated, however, that she did not recall if she felt a push in the back or if officers took hold of her arms to bring her down onto the bed. She did not recall the specific physical contact they made with her at that time.

Lt. Marsella and PO Fecanji confirmed that they made first contact with § 87(2)(b) in the bedroom, at the foot of her bed. Lt. Marsella stated that § 87(2)(b) “dove” onto the bed to try to take hold of her cell phone. PO Fecanji also stated that § 87(2)(b) fell onto her knees and appeared to reach for something on her bed, which may have been her phone. Both officers denied

pushing § 87(2)(b) or using a forcible takedown to bring her onto the bed.

Lt. Marsella and PO Fecanji recorded BWC videos capturing the relevant interactions. Lt. Marsella's BWC video (Board Review 01), between the 2 minute mark and the 2 minute 15 second mark, and PO Fecanji's BWC video (Board Review 03), between the 2 minute mark and the 2 minute 10 second mark, show the officers entering § 87(2)(b) bedroom and taking hold of her arms. § 87(2)(b) either lowers herself onto the bed or is gently lowered onto the bed by the officers. The video reveals that no officer pushed her from behind or forcibly pushed her down onto the bed.

§ 87(2)(g)

**Allegation (D) Abuse of Authority: Police Officer Robert Wilson interfered with § 87(2)(b) use of a recording device.**

**Allegation (E) Discourtesy: Police Officer Robert Wilson acted discourteously toward**

§ 87(2)(b)

§ 87(2)(b) stated that when the officers arrived at her apartment door, she was on a video call with § 87(2)(b). When the officers entered her bedroom, § 87(2)(b) phone was on the bed, screen-side up. The video call was still active, and § 87(2)(b) could see § 87(2)(b) face on the screen. An officer then pressed a button on the phone screen, disconnecting the video call. § 87(2)(b) did not see which officer did this.

§ 87(2)(b) confirmed that she was on a video call with § 87(2)(b) when the officers entered the bedroom. § 87(2)(b) saw an officer's head in the frame of the video call, and then the video call ended. § 87(2)(b) did not know why or how the call ended.

The first of PO Wilson's two BWC videos pertaining to this incident (Board Review 04) reveals, at the 2 minute 32 second mark, that PO Wilson ended the video call on § 87(2)(b) phone.

PO Wilson stated that when he entered § 87(2)(b) bedroom, a cell phone on the bed appeared to be engaged in a video call. PO Wilson saw a female's face on the screen and thought that it might be § 87(2)(b) psychiatrist, who had said during their earlier telephone conversation that she would be speaking with § 87(2)(b) when the officers arrived. However, PO Wilson was unable to confirm this, as he did not speak with the individual on the video call. PO Wilson was concerned because he did not know who was on the call and did not know if that person would aggravate § 87(2)(b) or raise her level of alarm. He ended the video call and turned the phone off so that the officers would be able to have a calm conversation with § 87(2)(b). He did so as a safety measure. There was no other reason he ended the video call and turned off the phone. Additionally, it was irrelevant to him who was on the call. He would have ended the call no matter who was on the phone.

According to NYPD Patrol Guide Procedure 203-29 (Board Review 05), individuals have a right to lawfully observe and/or record police activity. This right extends to individuals in public places, such as streets, sidewalks, and parks, as well as private property in which the individual has a legal right to be present, such as buildings, lobbies, workplaces or an individual's own property. This right to observe and/or record police action can be limited for reasons such as the safety of officers or other members of the public, or when a violation of law is committed by the individual(s) who are observing/videotaping. However, an officer may not intentionally block or obstruct cameras or



other recording devices when there is no legitimate law enforcement reason to do so. Additionally, NYPD Patrol Guide Procedure 200-02 states that the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect (Board Review 06).

Per NYPD Patrol Guide Procedure 203-29, § 87(2)(b) was permitted to record the incident, and § 87(2)(b) was permitted to observe. An individual's right to observe or record police activity may be limited due to a safety concern, and PO Wilson described a general concern that the video call might in some way aggravate § 87(2)(b). However, the active video call did not create any actual hazard for the officers or for § 87(2)(b) and it did not impede the officers in any way. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) § 87(2)(b) Ending a video call without permission is comparable to hanging up a phone in the traditional sense. § 87(2)(b) could have ended the call of her accord. She is a medical professional § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Abuse of Authority: Lieutenant Joseph Marsella forcibly removed § 87(2)(b) to the hospital.**

It is undisputed that § 87(2)(b) § 87(2)(b) psychologist, reported to the NYPD that § 87(2)(b) was actively suicidal and required evaluation at a hospital, and that § 87(2)(b) would not visit a hospital voluntarily. It is further undisputed that Lt. Marsella and his officers handcuffed § 87(2)(b) and had her removed to a hospital against her will.

According to Lt. Marsella, due to the nature of § 87(2)(b) report, § 87(2)(b) could not refuse medical attention and would be required to visit a hospital, whether voluntarily or involuntarily. FDNY § 87(2)(b) and § 87(2)(b) who responded to the scene, also testified that § 87(2)(b) could not refuse medical attention and, as a result of § 87(2)(b) concerns, was required to visit a hospital for evaluation.

NYPD Patrol Guide Procedure 221-13 (Board Review 07) defines an emotionally disturbed person as a person who appears to be mentally ill or temporarily deranged and is conducting themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. This procedure instructs that when officers encounter an emotionally disturbed person whose actions constitute an immediate threat of serious harm to themselves or others, officers should take reasonable measures to terminate or prevent such behavior and make every effort to de-escalate the situation through tactical communication. Officers should have the individual removed to a hospital in an ambulance, and restraining equipment including handcuffs may be used if the individuals resist.

Because § 87(2)(b) reported that § 87(2)(b) posed an imminent threat to herself, responding officers were required to comply with Patrol Guide Procedure 221-13. Lt. Marsella and his officers restrained § 87(2)(b) in order to mitigate the risk that she might harm herself. They also attempted to de-escalate the situation by informing § 87(2)(b) that they would not harm her and wished to help. Ultimately, § 87(2)(b) was removed to a hospital in handcuffs. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 08).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 09).
- Lt. Marsella has been a member of service for thirteen years and has been a subject in two other CCRB complaints with two allegations, neither of which was substantiated. § 87(2)(b)
- PO Wilson has been a member of service for three years and has been a subject in two other CCRB complaints with two allegations, neither of which was substantiated. § 87(2)(b)
- PO Fecanji has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.

### Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 27, 2021, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 10).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 2

Investigator: Samuel Ross SI Samuel Ross 05/13/2022  
Signature Print Title & Name Date

Squad Leader: Monique West IM Monique West 09/27/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date